THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RSA 46 OF 1995.

JUDGMENT RESERVED ON 13.3.2007.

Decided on 3.4.2007.

Mogi Nand **….Appellant.**

Versus

Prem Singh and others **….Respondents.**

Coram:

Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting? Yes.

For the appellant	**Shri Kuldip Singh Kanwar, Sr. Advocate, with Mr. Bimal Gupta, Advocate.**
For respondents 1(b) to 1 (i):	**Mr. G.D.Verma, Sr.Advocate, with Mr. B.C.Verma, Advocate.**

Dev Darshan Sud, J.

This is the defendant's second appeal against the judgment and decree of the learned Additional District Judge, reversing the judgment and decree passed by the

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Whether the Reporters of the Local Papers may be allowed to see the Judgment? Yes.

learned trial Court. The appellant and proforma respondents were the defendants before the learned trial Court. The suit, out of which the present appeal arises, was filed by the respondent Shri Kishan Singh alias Kishnu, in the Court of the learned Senior Sub Judge, Sirmaur in the year 1988. A decree of declaration that the plaintiff is the owner to the extent of half share of land comprised in Khata No. 6 khatoni No. 9, khasra No. 367/338, 358 and 359 and khata khatoni No. ¾ khasra No. 347 and 352 and in exclusive possession of khasra No. 367/338/1 measuring 11-4 bighas as per tatima attached and khasra No. 359 in mauza Bathivali, Patti Bathivali, Tehsil Pachhad, Distt. Sirmaur (H.P.), enumerated in jamabandi for the year 1981-82 and 1972-73 respectively; decree of declaration that all revenue records and transaction whatsoever in respect of the suit land are void, illegal and not binding upon the interests of the plaintiff, was prayed for. The plaintiff also sought a decree for permanent prohibitory injunction restraining defendant No. 1 from interfering in possession of the land was also sought.

The brief facts as pleaded before the learned trial Court by the plaintiff are that defendant No.

1 and the plaintiff are real brothers and occupancy tenants over the suit land comprised in Khewat No. 3, khatauni No. 5, khasra Nos. 347, 358, 359 and non occupancy tenant over khasra No. 352 and 357 in mauza Bathivali, Pargna Givivar, Tehsil Pachhad, as per jamabandi for the year 1958-59. The plaintiff alleges that he and defendant No. 2 used to live with defendant No. 1 jointly as a joint family till the year 1970. All cultivation and other works were done jointly by them. Defendant No. 1 being the elder member, used to do the work as the head of the family after the death of the father of the plaintiff and defendant. The produce of the land was used for the entire family by the brothers.

During the years 1960-62, the ownership of the land in dispute was given to the plaintiff and defendant No. 1 recorded in Roznamcha Rapat No. 275, dated 13.9.1960 and Rapat No. 377 dated 31.8.1962. The plaintiff has submitted that after the Rapats entered in the Rojnamcha Wakyati, mutations are entered in the register. However, the Assistant Collector Ist Grade committed an error by omitting the name of the plaintiff from the column of ownership, and defendant No. 1 was described as the sole and the only owner of the land. This, according to the plaintiff, is a fraud played upon him or was a mistake

committed by the Assistant Collector Ist Grade. Up to 1970, both the brothers were joint. A family settlement was made between the plaintiff and defendant No. 1 and a part of khasra Nos. 367/338, measuring 11.4 bighas and khasra No. 359, measuring 3.1 bighas, in all measuring 14.5 bighas was given to the plaintiff. He is in possession of this land personally and through his son Surinder Singh who is also his General Power of Attorney.

The plaintiff then alleges that defendant No. 1 has inducted defendants 2 to 20 as non occupancy tenants after the family settlement. According to him, this tenancy was created in khasra Nos. 347 and 352. He submits that he had not authorized the induction any tenants. An application for correction was moved by the attorney of the plaintiff before the Assistant Collector Ist Grade which was decided on 15.1.1988. According to the plaintiff, an observation has been made by the Assistant Collector Ist Grade that though the entries do not depict a true position, but they cannot be changed by the revenue Court, as the matter is not in their jurisdiction and that complicated questions of law and fact can only be adjudicated in the Civil Court.

Defendant No. 1 and defendants 2 to 20 have filed their separate written statements contesting the

claim of the plaintiff. The main defence taken by defendant No. 1 is that by two mutation Nos. 89 and 90, the factum of the land having been purchased by the defendant No. 1 for Rs.400/- was correctly recorded and that the plaintiff's right, title and interest in khasra Nos. 347 and 352 stands extinguished.

The trial Court while dismissing the suit held that the allegation of the plaintiff that a partition had been effected in the year 1970 and by virtue of this, half the land was allotted to the plaintiff was not proved, although the revenue record does indicate that since 1970 the parties are living separately and cultivating their lands in different villages. The learned trial Court also held that the presumption of truth attaches to the revenue record and as such the plaintiff has not been able to rebut the truth attaching to such entries.

Neither the defendant nor the plaintiff has entered the witness box, but depositions on their behalf have been made by their respective attorneys. The learned trial Court, on consideration of the evidence before it, dismissed the suit of the plaintiff.

The appellate Court has reversed the findings and has held that when proprietary rights were granted to plaintiff and defendant vide Ex. DW-1/F, the defendant was

acting as the guardian of the plaintiff who was a minor at that time. According to the learned appellate Court, the mutations recording entry of grant of proprietary rights having been pursued by defendant No. 1, continued to be recorded wrongly in the revenue records by excluding the names of the plaintiff. After considering the evidence in detail, the learned Appellate Court decreed the suit. The defendant has now filed the appeal against the judgment of reversal on a number of grounds.

This appeal was admitted on question of law Nos. 1 to 4 filed with the grounds of appeal. At the hearing of the appeal, question No. 3, which related to the jurisdiction of the civil Court to entertain the suit, has not been pressed before me. The only question for determination is whether the learned appellate Court was right in declaring mutation Nos. 89 and 90 (Exs.P-6and P-8) as wrong, illegal and not binding on the interests of the plaintiff; (b) whether the learned appellate Court was correct in holding that the plaintiff is a joint tenant on khasra No. 367 and (c) whether the learned Court below has erred in returning a finding that tenancy of tenants on khasra Nos. 347 and 352 is not binding upon the plaintiff especially when this issue was not pressed.

On question No.4 relating to the fact as to whether the learned appellate Court was correct in holding that the plaintiff did not consent to the induction of tenants on Khasra Nos.347 and 352. Learned counsel for the appellant has submitted that issue No.5 as framed by the learned trial Court was specific on this point. The finding recorded by the learned trial Court is that the issue has not been pressed by the counsel for the plaintiff at the time of arguments. I find it difficult to accept this contention. Learned trial Court has held that since it has not been proved that the plaintiff is the owner in possession to the extent of half share in the suit land, defendant No.1 (present appellant) was not required to obtain his consent for inducting the predecessors-in-interest of defendants No.2 to 20 as tenants on these Khasra numbers. Having come to a positive conclusion that the evidence does not establish ownership, the learned trial Court proceeded to hold that this issue was not pressed by the learned counsel for the plaintiff at the time of the arguments. In these circumstances, it cannot be held that the issue had been abandoned as argued by the learned counsel for the appellant. Admittedly, once the Court had come to the conclusion on merits and decided the issue of ownership, this issue became redundant and

separate finding by any other reasoning was not required. The learned trial Court has proceeded to decide the issue of ownership and then proceeded to decide the other issues. No attempt has been made to consider the other 13 issues independently. The learned appellate Court has considered the submissions made in detail before rendering its decision. I do not find from the record anything which would suggest the idea of abandonment. It is difficult to hold that after a positive finding has been rendered, a finding of abandonment can be recorded by the learned trial Court. Surely, once the issue of ownership had been decided, against the plaintiff, the issue of consent for induction of tenants became redundant. The submissions made by the learned counsel cannot, therefore, be accepted.

On the other three questions which have been raised by the appellant; namely; whether the learned trial Court was correct in setting side the mutation on the basis of which the defendant claims title and whether the learned appellate Court was correct in holding that Khasra No.367 was joint between the parties and required to be entered in their names in equal shares, the learned appellate Court has considered the evidence in detail holding that the appellants-defendants-respondents were brothers. It has been found as a fact that both of them resided together and

before the year 1961 the suit land was held jointly by the appellant and respondent No.1. Proprietary rights were conferred on the parties by the Compensation Officer by virtue of Ex.DW-1/E on 1.6.1969. At the relevant point of time, the appellant was acting as the guardian of the plaintiff-respondent who was a minor. The possibility of manipulation could not be excluded. The title claimed by the appellant was on the basis of mutation which neither extinguishes nor grants ownership rights or can be treated as the foundation of title. The learned appellate Court has considered in detail that there is no evidence on the record to establish that the mutations which were the basis of title claimed by the respondents were attested in accordance with law. Even for arguments sake if it is assumed that such revenue entries were carried out lawfully, mutation cannot be the basis for any claim of title. I am not persuaded to hold that the learned appellate Court was remiss or wrong in coming to the conclusion that the judgment of the learned trial Court was not in accordance with law. It is by now well settled that revenue records are not documents of title and also mutation in the revenue records does not create or extinguish title. It has no presumptive value, but is relevant only for fiscal purposes.

The Hon'ble Supreme Court in *Swarni(Smt) vs. Inder Kaur (Smt) and Others (1996)6 SCC 223,* has held that mutation does not create or extinguish title nor does it have any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question.

Similarly, *in State of H.P. vs. Keshv Ram and Others, (1996)11 SCC 257,* the Hon'ble Supreme Court has been pleased to hold:-

> **"……The question, therefore, arises as to whether the entry in the settlement papers recording somebody's some could create or extinguish title in favour of the person concerned? It is to be seen that the disputed land originally stood recorded in the name of Raja Sahib of Keonthal and thereafter the State was recorded to be the owner of the land in the record of right prepared in the year 1949-50. In the absence of the very order of the Assistant Settlement Officer directing necessary correction to be made in favour of the plaintiffs, it is not possible to visualize on what basis the aforesaid direction had been made. But at any rate such an entry in the Revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs……".**

To similar effect are the judgments of the Apex Court in *Jattu Ram vs. Hakam Singh and others, AIR 1994 SC 1653 and Guru Amarjit Singh vs. Rattan Chand and others, AIR 1994 SC 227.* In this case, their Lordships have held that maintenance and custody of revenue records is the exclusive domain of the Patwari and instances are not lacking when the record is tinkered to suit the exigencies. Their Lordships further held that entries are often made which are not to the knowledge of the parties and may not be genuine or accurate.

Learned counsel for the respondent has submitted that in second appeal, the jurisdiction of this Court is circumscribed to a decision on substantial question of law involved. Merely because this Court may come to different conclusion on the appraisal of the evidence would not be a ground for disturbing the findings of fact which have become final. It is only if there is any perversity in the appreciation of evidence or the finding is based on such facts which are not on the record, that this Court can interfere in second appeal. He has placed reliance on the decision of the Hon'ble Supreme Court in *Ishwar Dass Jain (Dead) through Lrs vs. Sohan Lal (Dead) by LRs., (2000)1 SCC 434.* He submits that such interference is permissible

only when relevant evidence is not considered which, if properly appreciated, would reverse the findings or the findings are based on inadmissible evidence. In the present case, the findings of the learned appellate Court are not in violation of the principles as laid down by their Lordships of Supreme Court. He has also drawn my attention to *Dnyanoba Bhaurao Shemade vs. Maroti Bhaurao Marnor, (1999)2 SCC 471,* in which it has been held that whether a finding of fact reached is against the weight of evidence or not is a pure question of fact which will remain in the realm of appreciation of evidence and it does not confer jurisdiction on the High Court to re-appreciate the evidence and upset such findings in appeal. Considered from any point, I find that the submissions which have been made by the learned counsel for the respondents-plaintiffs are correct.

In the totality of the circumstances, I hold that the learned appellate Court was correct in reversing the judgment and decree of the learned trial Court on proper appreciation of the evidence and it would not be for this Court to re-appreciate the evidence or weight to be attached to it. There is no defect in the impugned judgment in the nature of the findings being based on inadmissible evidence or exclusion of evidence which

otherwise would have changed the entire complexion or nature of the case. The defendant's claim to title, on the basis of mutation, cannot be accepted and in the suit filed by the plaintiffs will not entitle them to a finding that such mutation confers title on him. The appeal is, therefore, dismissed. There shall be no order as to costs.

April 3, 2007. **(Dev Darshan Sud)**
(PC/aks) **Judge.**